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Conflict of Laws -- Workmen's Compensation -- Application of Full Faith and Credit to Statutes and Awards

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and *Clark* decisions should be seriously considered in the determination of future conflicts arising in this area.

WILLIAM E. ZUCKERMAN.

Conflict of Laws—Workmen's Compensation—Application of Full Faith and Credit to Statutes and Awards

Shortly after the introduction of the first workmen's compensation statutes,¹ the courts faced the problem of their application where an employee had been hired in one state and was injured in a sister state. Prior to 1932 each state decided whether the situation permitted the application of her own act.² The claimant, suing in the *locus delicti*, usually succeeded in invoking the application of its statute.³ In some instances, however, certain restrictive statutory provisions prevented the state of the injury from applying her act⁴ and the employee had to resort to suit in the state where his contract had been made.⁵ In these cases suit had to be brought in the state of the contract in order to obtain the benefit of that state's act, as the state of the injury considered the cause of action created by the foreign act to be so interwoven with the remedy that it felt compelled not to enforce it.⁶ Occasionally, the requirements

¹ Wisconsin's workmen's compensation act was the first to take effect (1911). SOMERS, *WORKMEN'S COMPENSATION* 32 (1954). The New York statute was the first to be declared constitutional by the United States Supreme Court. *N. Y. Central Railroad Co. v. White*, 243 U. S. 188 (1917).

² LARSON, *WORKMEN'S COMPENSATION LAW* § 86.20 (1954).

³ *Ocean Accident & Guarantee Corp. v. Ind. Comm'n*, 32 Ariz. 275, 257 Pac. 644 (1927); *Farr v. Babcock Lumber & Land Co.*, 182 N. C. 725, 109 S. E. 833 (1921); *Interstate Power Co. v. Ind. Comm'n*, 203 Wis. 466, 234 N. W. 889 (1931). However, where the statute of the place of the injury is of the contractual type, the courts have refused to apply their acts to injuries within the state, if the hiring had been elsewhere. *Hall v. Ind. Comm'n*, 77 Colo. 338, 235 Pac. 1073 (1925); *Barnhart v. American Concrete Steel Co.*, 227 N. Y. 531, 125 N. E. 675 (1925).

Bagnel v. Springfield Sand & Tile Co., 144 F. 2d 65 (1st Cir. 1944), *cert. denied* 323 U. S. 735 (1944) seems to be the first case in which a court permitted recovery for an injury in the forum (Massachusetts) though all other incidents of employment were elsewhere (New York). But it is now well established that the state in which the injury occurred may give an award. *Carroll v. Lanza*, 349 U. S. 408 (1955); *Pacific Employers Ins. Co. v. Industrial Acc. Comm'n*, 306 U. S. 493 (1939).

⁴ 2 LARSON, *WORKMEN'S COMPENSATION LAW* § 87.14 (1952).

⁵ *Grinnel v. Wilkinson*, 39 R. I. 447, 98 Atl. 103 (1916); *Gooding v. Ott*, 77 W. Va. 487, 87 S. E. 862 (1916).

The United States Supreme Court has held that the state of the contract may give an award. *Alaska Packers Ass'n v. Industrial Acc. Comm'n*, 294 U. S. 532 (1935). Twelve states confer coverage regardless of where the injury occurred if the contract was made in the state; Nevada requires also that the employee is in regular employment in the state; California and Michigan require that the employee also be in residence there. Other states permit recovery only if more than two factors coincide; *e.g.*, N. C. GEN. STAT. § 97-36 (1950): "If the contract of employment was made in this State, if the employer's place of business is in this State, and if the residence of the employee is in this State; provided his contract of employment was not expressly for service exclusively outside of the State."

⁶ In *Mosely v. Empire Gas & Fuel Co.*, 313 Mo. 225, 281 S. W. 762 (1925), the claimant could not proceed in the Missouri court under the Kansas Work-

in both statutes have been such as to preclude the employee from invoking the application of the statute of either state;⁷ however, the prevailing view was that he could apply for relief in both states.⁸ Today, certain states permit their acts to be applied even if the contract is made and the injury is sustained elsewhere because an employer-employee relationship exists,⁹ or because the employer's business is localized in the state.¹⁰

The first constitutional limitation upon the freedom of the states in determining the applicability of their own acts came in 1932 when *Bradford Electric Light Co. v. Clapper*¹¹ was decided. Suit had been brought in New Hampshire under its workmen's compensation act by the administratrix of the deceased employee. His residence, as well as his employer's place of business were in Vermont whose law made the remedy provided by it exclusive¹² of all other remedies and liabilities between the employer and employee, regardless of where the injury or death occurred. The employer availed himself of the Vermont act in defense to this suit. The Supreme Court held that the creation of the employment relation between the decedent and his company under the law of Vermont required New Hampshire's recognition of the obligation created under the Vermont law and that it be given full faith and credit¹³ in the New Hampshire courts.¹⁴ Furthermore, the Court found the interest of New

men's Compensation Act. He was remitted to the agency which Kansas had set up to administer its law. There is, however, no obstacle to enforcement if the compensation laws of a state are court administered. Thus, the Louisiana compensation act was enforced by the Mississippi court in *Floyd v. Vicksburg Cooperage Co.*, 156 Miss. 567, 126 So. 395 (1930).

⁷ *House v. State Industrial Acc. Comm'n*, 167 Ore. 257, 117 P. 2d 611 (1941).

⁸ *Ohio v. Chattanooga Boiler & Tank Co.*, 289 U. S. 439 (1933).

⁹ *Cudahy Packing Co. v. Parramore*, 263 U. S. 418 (1923). Regular employment within the state is often sufficient to permit recovery. A few states (Delaware, Pennsylvania, and Maryland) also require that the employer's business be within the state. 2 LARSON, WORKMEN'S COMPENSATION LAW § 87 (1952). The United States Supreme Court held in *Cardillo v. Liberty Mutual Ins. Co.*, 330 U. S. 469 (1947) that the District of Columbia had a substantial interest in the employer-employee relationship and permitted a recovery in the District for an injury sustained in Virginia.

¹⁰ *Stansberry v. Monitor Stove Co.*, 150 Minn. 1, 183 N. W. 977 (1929); *State ex. rel. Chambers v. District Court*, 139 Minn. 205, 166 N. W. 185 (1918).

But no state statute permits recovery solely on the basis of residence. Horovitz, *Reviews of Leading Current Cases*, 16 NACCA L. J. 38 (1955). An act limiting recovery to residents was held unconstitutional in *Quong Ham Wah Co. v. Industrial Acc. Comm'n*, 184 Cal. 26, 192 Pac. 1021 (1920), *writ of error dismissed*, 255 U. S. 445 (1921).

¹¹ 286 U. S. 145 (1932); 11 N. C. L. REV. 116 (1933).

¹² The operation of many workmen's compensation acts is exclusive of all other remedies and liabilities between the employer and the employee with regard to the injury sustained, unless the act or an agreement between the parties provide otherwise. *Jenkins v. American Enka Corp.*, 95 F. 2d 755 (4th Cir. 1938).

¹³ The United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State." U. S. CONST. art. IV, § 1. A statute is a "public act" within the meaning of the Full Faith and Credit Clause. *Tennessee Coal, Iron & R. R. Co. v. George*, 233 U. S. 354, 360 (1914).

¹⁴ "It was clearly the purpose of the Vermont Act to preclude any recovery by

Hampshire in this litigation to be only casual¹⁵ and her public policy not affected by this decision.¹⁶

The following year, *Ohio v. Chattanooga Boiler and Tank Co.*¹⁷ reached the Supreme Court. The employer and employee had accepted the Tennessee workmen's compensation act which applied to injuries elsewhere than in the state if the contract of employment was made in Tennessee. An award had been made in Ohio under the Ohio statute, and the State of Ohio sought to recover from the employer in Tennessee. The employer claimed that the award should have been made under the Tennessee act and that making an award under the Ohio act failed to give full faith and credit to the Tennessee law. The Supreme Court rejected this defense and held that the *Clapper* case did not require the application of full faith and credit where the state statute did not provide an exclusive remedy between employer and employee.

In *Alaska Packers Association v. Industrial Accident Commission*,¹⁸ the Supreme Court modified the formal approach of the *Clapper* and *Ohio* cases under the Full Faith and Credit Clause and permitted the state which had the greater interest to apply her act. Here the contract had been entered into in California and the parties had provided for the exclusive application of the Alaska workmen's compensation act. The employee was injured in Alaska and, on his return to California, brought suit there under the California law. In defense, the employer contended that the full faith and credit required to be given to the Alaska act barred the application of California's statute. The Supreme Court held that California could apply its act since it had a greater interest in this litigation than Alaska. The Court evidently anticipated that the injured employee, an indigent Mexican, would have become a public charge if the suit had not been allowed.

This decision created a second exception to the application of the Full Faith and Credit Clause: That an act which purports to provide an exclusive remedy to an employee injured in the course of his employment no longer controls if the state in which the suit is brought is substantially concerned with the result of the proceedings.

proceedings brought in another state for injuries received in the course of a Vermont employment." 286 U. S. 145, 153 (1932).

¹⁵ In the light of subsequent decisions of the Supreme Court and the criticism which has been made because recovery under the New Hampshire act had been denied, it should be noted that the Supreme Court made this qualification: "We have no occasion to consider whether if the injured employee had been a resident of New Hampshire, or had been continuously employed there, or had left dependents there, recovery might validly have been permitted under the New Hampshire law." 286 U. S. at 163.

¹⁶ "[The courts] do not close their doors unless help would violate some fundamental principles of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal." Cardozo, J., in *Loucks v. Standard Oil Co.*, 224 N. Y. 99, 111, 120 N. E. 198, 202 (1918).

¹⁷ 289 U. S. 439 (1933).

¹⁸ 294 U. S. 532 (1935).

Similar reasons prevailed in *Pacific Employers Insurance Co. v. Industrial Accident Commission*.¹⁹ The claimant had been hired in Massachusetts whose workmen's compensation law provided the exclusive remedy regardless of where the injury occurred. Here, too, suit was brought in California, the *locus injuria*, under the California statute. Again the Supreme Court held that the Full Faith and Credit Clause did not require the application of the foreign exclusive statute and permitted California to apply "the remedy given by its own statute to its residents by way of compensation for medical, hospital and nursing services rendered to the injured employee."²⁰ It would have been obnoxious to California's public policy to require that the parties seek their remedy in Massachusetts.

Finally, *Carroll v. Lanza*²¹ seems to leave little doubt that the forum need not give full faith and credit to the act of a sister state in determining its right to apply its own. Carroll entered into a Missouri employment contract with Hogan, a sub-contractor, who had contracted with Lanza for work to be performed in Arkansas. Carroll was injured on the job and brought suit in Arkansas against Lanza for common-law damages. The Supreme Court rejected Lanza's defense based on the exclusive Missouri statute and held that Arkansas had a sufficient interest to safeguard non-resident employees within the state.²² Since the claimant had been removed to a Missouri hospital immediately after the injury, the court seemed to hold that the occurrence of the injury in Arkansas alone was sufficient grounds for the employee to seek a remedy under Arkansas laws: "Arkansas therefore has a legitimate interest in opening her courts to suits of this nature, even though in this case Carroll's injury may have caused no burden on her or on her institutions."²³ Thus, with this decision the United States Supreme Court seems to have come full circle since the *Clapper* case.²⁴

¹⁹ 306 U. S. 493 (1939).

²⁰ *Id.* at 501.

²¹ 349 U. S. 408 (1955).

²² Discussing the exclusive remedy provided by the Missouri statute, the Supreme Court said: "Missouri can make her Compensation Act exclusive, if she chooses, and enforce it as she pleases *within* her borders. Once that policy is extended into other States, different considerations come into play. . . . We do not think the Full Faith and Credit Clause demands *that* subservency from the State of the injury." (Emphasis added.) 349 U. S. at 413-414.

²³ 349 U. S. at 413.

²⁴ Justice Frankfurter, dissenting in *Carroll v. Lanza*, stated: "To make the interest of Arkansas prevail over the interest of Missouri on the basis of the Full Faith and Credit Clause would require that *Clapper* be explicitly overruled and that, in the area of workmen's compensation law, the place of injury be decisive. . . . It should not be cast aside on the presupposition that full faith and credit need not be given to a sister-state workmen's compensation statute if the law of the forum happens to be more favorable to the claimant." 349 U. S. at 421-422. However, the late Professor Beale would have been pleased with this turn of events: "It is greatly to be hoped for that the decision in the *Clapper* case will not stand; so opposed is it to authority and to the well-established rule of jurisdiction." 2 BEALE, *CONFLICT OF LAWS* 1326 (1935).

While the employee is free to make his choice of law, once he has made that choice he may be barred from asserting any further rights. The Full Faith and Credit Clause is still a major consideration where successive awards are being sought.

In 1943, the United States Supreme Court decided *Magnolia Petroleum Co. v. Hunt*.²⁵ The petitioner had been employed in Louisiana and had suffered an injury while on his job in Texas. He applied for compensation there, not knowing at the time that Louisiana could give him greater benefits. The Texas Accident Board made an award. He then sought additional compensation in Louisiana. The Supreme Court denied the second recovery. It based its decision on the Texas workmen's compensation act which provided that once an award had been made elsewhere, a second recovery could not be had in Texas.²⁶ The Court interpreted this to mean also that once an award was had in Texas it was "final"²⁷ and required that it be given full faith and credit in all other states.

This decision was opposed to many well-considered state court opinions which had permitted a second recovery and had given full faith and credit to a prior award by crediting the employer with an amount equal thereto.²⁸ Some courts had allowed full recovery in both states on the theory that the employer had paid for insurance policies in each,²⁹ even if the total of the sums received by the employee was greater than the total permissible under their own acts.³⁰ Following the *Magnolia Petroleum Co.* case many state courts continued to permit a second recovery.³¹

²⁵ 320 U. S. 430 (1943), *rehearing denied*, 321 U. S. 801 (1943).

²⁶ The section of the Texas statute which was relied on by the majority provides that an employee who is injured outside of the state cannot recover under the Texas Act if "he has elected to pursue his remedy and recover in the state where such injury occurred." TEX. REV. CIV. STAT. art. 8306 § 19 (1936).

²⁷ "The Texas award had the force and effect of a judgment of a court of that state and is res judicata there." 320 U. S. 430, 443 (1943).

²⁸ *McLaughlin's Case*, 274 Mass. 217, 174 N. E. 338 (1931); *Price v. Horton Motor Lines*, 201 S. C. 484, 23 S. E. 2d 744 (1942); *Salvation Army v. Industrial Comm'n*, 219 Wis. 343, 263 N. W. 349 (1935); RESTATEMENT, CONFLICT OF LAWS § 403, prior to the 1947 amendment. *But cf.* *DeGray v. Miller Bros. Const. Co.*, 106 Vt. 259, 173 Atl. 556 (1934).

²⁹ "Recovery of compensation in two states is no more illegal, and is not necessarily more unjust than recovery upon two policies of accident or life insurance." *Rounsaville v. Central R. R. Co.*, 87 N. J. L. 371, 374, 94 Atl. 392, 393 (1915) (dictum).

³⁰ *Shelby Mfg. Co. v. Harris*, — Ind. App. —, 44 N. E. 2d 315 (1942).

³¹ *Cline v. Byrne Doors*, 324 Mich. 540, 37 N. W. 2d 630 (1949) granted compensation in Michigan following a recovery of medical payments in Florida; *Loudenslager v. Gorum*, 355 Mo. 181, 195 S. W. 2d 498 (1946) permitted an award under the Missouri act after Arkansas had denied a recovery; see also *Industrial Indemnity Exchange v. Industrial Acc. Comm'n*, 80 Cal. App. 2d 480, 182 P. 2d 309 (1947); *Cook v. Minneapolis Bridge Constr. Co.*, 231 Minn. 433, 43 N. W. 2d 792 (1950).

"Sufficient faith and credit are given to the first award when its entire amount is deducted from the second award, and furthermore, the framers of the Constitu-

In *Industrial Commission of Wisconsin v. McCartin*,³² Illinois, the state of the contract, had made an award for an injury sustained by the claimant in Wisconsin after a settlement between the employer and employee which provided that it did not affect any rights that the employee wanted to exercise elsewhere. The employee then applied to Wisconsin for a second award. The Wisconsin Supreme Court denied the application,³³ basing its decision on the *Magnolia Petroleum Co.* case. The United States Supreme Court reversed, stating that the Illinois act, unlike the Texas act in the *Magnolia* case, did not preclude an additional award in another state: "If it were apparent that the Illinois award was intended to be final and conclusive of all the employee's rights against the employer . . . the *Magnolia Petroleum Co.* case would be controlling here."³⁴

Thus, the *McCartin* case seems to have limited the application of the Full Faith and Credit Clause in actions for a second award to cases where a prior award is "final" according to the express wording of the first state's workmen's compensation statute.

The "finality" of an award was also considered by the Supreme Court in *Carroll v. Lanza*.³⁵ The injured employee had received a number of weekly payments under Missouri's workmen's compensation act, but no formal award had been made. The payments were not final as they had not been adjudicated. The Missouri act, unlike the Texas act in the *Magnolia* case, did not deny a second recovery elsewhere. The Supreme Court held that the employee was not precluded from maintaining a second action in Arkansas, where he had been injured, and affirmed a recovery there.

tion little dreamed that the full faith and credit clause would be applied to a theory of work-injury liability unknown in their day." HOROVITZ, WORKMEN'S COMPENSATION 42 (1948). But cf. *Butler v. Lee Bros. Trucking Contractors*, 206 Ark. 884, 178 S. W. 2d 58 (1944); *Overcash v. Yellow Transit Co.*, 352 Mo. 993, 180 S. W. 2d 678 (1944).

³² 330 U. S. 622 (1947).

³³ *McCartin v. Ind. Comm'n*, 248 Wis. 570, 22 N. W. 2d 522 (1946).

³⁴ *Id.* at 626. The import of the Texas statute and the Illinois act is similar: "The employees . . . shall have no right of action against their employer . . . for damages for personal injuries . . . but such employees . . . shall look for compensation solely to the association. . . ." TEX. REV. CIV. STAT. art. 8306 § 3 (1936). The Illinois act provides that "no common law or statutory right to recover damages for injury or death sustained by an employee . . . other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this act." ILL. ANN. STAT. c. 48 § 143 (1931). Neither act expressly provides that an award made in either Texas or Illinois is a bar to a second award elsewhere. The writer submits that the Supreme Court properly could have relied on TEX. REV. CIV. STAT. art. 8306 § 3 to reach a different result in the *Magnolia Petroleum Co.* case.

Professor Larson believes that since the majority of workmen's compensation laws resemble the Illinois act, the decisions in the *McCartin* case can be taken to mean that successive awards are now sanctioned. 2 LARSON, WORKMEN'S COMPENSATION LAW § 85.20 (1952).

³⁵ 349 U. S. 408 (1955).

In reaching this decision the Supreme Court used language which suggests a different interpretation of the meaning of "finality" in the *Magnolia Petroleum Co.* case. The Court, discussing the finality of the Missouri award in the present (*Lanza*) case, stated that the award which Texas had made in the *Magnolia* case had been final; but that the award made here was not final because, under Missouri law, payment had been voluntary and no adjudication between the employer and the employee had been sought. This distinction seems to refer to the *Magnolia Petroleum Co.* decision as having been based on an award given the finality of a judgment, instead of finality expressly contained in the governing statute on which the Court had previously distinguished the *McCartin* case. If the Supreme Court will abide by the *Lanza* interpretation of the *Magnolia* case, final (i.e. judgment) awards will have to be given full faith and credit in subsequent proceedings, and further recoveries will be barred.³⁶

Recently, the New Jersey Supreme Court had the opportunity to determine the "finality" of a New York award.³⁷ The employee had been injured in New Jersey and applied to New York, which granted a final (judgment) award. He then sought a second recovery in New Jersey. The New Jersey Court denied a second award; pointing to the *Magnolia Petroleum Co.* case, it stated that the "clear purpose of the Full Faith and Credit Clause . . . [is] that a litigation once pursued to judgment shall be conclusive of the rights of the parties. . . ."³⁸ (Emphasis added.) It seems that the New Jersey Court recognized the *Magnolia* case as standing for judgment-type finality in addition to statutory finality which it had not found in the New York act.³⁹

Apparently the New Jersey Court realized the harsh effect which would be produced by its interpretation of the *Magnolia* case. Its decision went on to say that full faith and credit need not be given in those cases where the prior award made in the other state "is so much less

³⁶ RESTATEMENT, CONFLICT OF LAWS § 403 (Supp. 1949) reads: "Award already had under the Workmen's Compensation Act of another state will not bar a proceeding under an applicable Act, unless the Act where the award was made was designed to preclude the recovery of an award under any other Act, but the amount paid on a prior award in another state will be credited on the second award." (Emphasis added.) The italicized phrase was inserted after the Supreme Court decided *Magnolia Petroleum Co. v. Hunt and Industrial Commission of Wisconsin v. McCartin*. It interprets the *Magnolia* case as requiring statutory finality to bar a second award. See also Donaldson, *Conflict of Compensation Laws*, 23 INSURANCE COUNSEL JOURNAL 110 (1956). On the other hand, at least two courts seem to have interpreted the *Magnolia Petroleum Co.* case as standing for finality of judgment. *Cline v. Byrne Doors*, 324 Mich. 540, 37 N. W. 2d 630 (1949); *Baduski v. Gumpert Co.*, 277 App. Div. 591, 102 N. Y. S. 2d 297 (1951).

³⁷ *Buccheri v. Montgomery Ward & Co.*, 19 N. J. 594, 118 A. 2d 21 (1955).

³⁸ *Id.* at 604, 118 A. 2d at 27.

³⁹ The New Jersey Supreme Court referred to "statutory finality" as "exclusive-ness"; it may thereby have left the impression that the New York workmen's compensation act to which it had reference is "not exclusive." 19 N. J. at 604, 118 A. 2d at 27.

than an award that could be allowed here that it can be reasonably said that such an award is in conflict with the policy of our act. . . ."⁴⁰ (Emphasis added.) While this limitation on full faith and credit may be ineffective between states which provide similar awards, it may be of value where great differences exist.⁴¹

Under the United States Supreme Court decisions the employee's rights to a second award is now uncertain. If the *Magnolia* case and the discussion of finality in the *Lanza* case may be relied on as requiring *judgment-type* finality, the injured applicant will be barred from a second award unless payments made by his employer were of a voluntary nature, the state court permits the exception indicated by the New Jersey Court. On the other hand, if *Magnolia Petroleum Co. v. Hunt* and *Industrial Commission of Wisconsin v. McCartin* may be relied on as requiring full faith and credit to be given a prior award only where it is final according to the express wording of the *statute*, a second recovery may be had in most cases.⁴²

The enactment of workmen's compensation statutes provided for allocation of costs to the employer for the compelling social reason that accidents are an inevitable hazard of industry. Their main objectives are adequate benefits, elimination of wasteful litigation, and certainty of payment.⁴³ Prompt indemnity for wages lost⁴⁴ as a result of injury should be the employer's immediate concern. He should not permit an "unholy race between uninformed workers and compensation wise car-

⁴⁰ 19 N. J. at 605, 118 A. 2d at 28.

⁴¹ The plaintiff had received \$25.60 for time lost under the New York statute which does not provide for compensation after the injured returns to work if his earning power has not been diminished. N. Y. WORKMEN'S COMPENSATION LAW, § 15, s. 3v (1946). The State of New Jersey, however, awards compensation based upon the extent of the disability regardless of diminution of earning capacity. N. J. REV. STAT. 34: 15-12c (1940). To how much more compensation would the plaintiff have to prove himself entitled in the second state in this and similar situations to come within the exception announced by the New Jersey Supreme Court?

The New Jersey Supreme Court will have an opportunity to review his decision. The instant case is pending on a petition for rehearing. Letter from Robert Scherling, Newark, N. J., Attorney for the plaintiff, to the writer, May 1, 1956.

⁴² The writer believes that an exception would be encountered only if the injured employee received his first award in Maryland. *Gasch v. Britton*, 202 F. 2d 356 (C. C. A. D. C. 1953).

N. C. GEN. STAT. § 97-36 (1950) provides that "if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this article." Therefore, an injured employee who received an award in State X and meets the jurisdictional requirements of the North Carolina act may recover an additional amount in North Carolina, but not more than the difference between the maximum amount provided by its statutes and the amount he received in the former state.

⁴³ SOMERS, WORKMEN'S COMPENSATION 27 (1954).

⁴⁴ Cash benefits replace little more than one third of the wage-loss in the average case. Bogusch, *Reports and Notes from Everywhere*, 16 NACCA L. J. 460 (1955).

riers to see who creates an award first"⁴⁴ if the employee is eligible for compensation in more than one state. Rather, employers and courts should provide protection⁴⁵ within the framework of the laws when dealing with redress for industrial injuries. Any other attitude would not be consonant with the spirit in which the compensation statutes were enacted.⁴⁶

PETER H. GERNs.

Constitutional Law—Contempt—Court's Jurisdiction over the Religious Upbringing of Children

The recent Iowa case of *Lynch v. Uhlenhopp*¹ presents a situation which probably has never arisen before. A divorce decree had been entered in a previous suit under which the wife had obtained custody of the six-year-old child of the marriage. The parents had agreed by stipulation, written and signed, that the "child shall be reared in the Roman Catholic religion," and the court's decree embodied the exact terms of this stipulation. Several months after the decree was entered, the petitioner (wife) began taking the child to Protestant Sunday school and since that time has been rearing the child in the Protestant faith. It seems that the father protested to the mother about this matter shortly after he learned about it, and brought the present proceedings to enforce the terms of the custody decree. In this proceeding the father did not seek and the district court did not order a transfer of the child's custody to him. The district court held that the decree was binding upon the mother so long as it remained unvacated and unmodified, adjudged her in contempt, but suspended passing sentence upon her in order to afford her an opportunity to purge herself by filing an affidavit to the effect "that she is rearing the child in the Catholic faith." Writ of certiorari was granted and execution of the order has been stayed pending completion of the hearing to review the order.

The main question presented on appeal will be whether the court

⁴⁴ In some cases the insurance carrier can create an award in the state whose laws are more favorable to the employer before the employee takes steps to protect himself. HOROVITZ, *WORKMEN'S COMPENSATION* 41 (1948); therefore, the result of the *Magnolia Petroleum Co.* case may tempt an employer to shop for the state with the smallest award. Cheatham, *Res Judicata and the Full Faith and Credit Clause—Magnolia Petroleum Co. v. Hunt*, 44 COLUM. L. R. 330, 345 (1944). . . .

⁴⁵ An award of compensation by the Arkansas commission to a Texas employee for injuries sustained in Arkansas, on petition filed by the employer *without the knowledge of the employee*, did not bar a second award under the Texas act. *Standard Acc. Ins. Co. v. Skidmore*, — Tex. Civ. App. —, 222 S. W. 2d 344 (1949).

⁴⁶ "Under our statute the workman is the soldier of organized industry, accepting a kind of pension in exchange for absolute insurance on his master's premises." Bausman, J., in *Stertz v. Ind. Ins. Comm'n*, 91 Wash. 588, 606, 158 Pac. 256, 363 (1916).

¹ — Iowa —, — N. W. 2d — (1956). Now on appeal from the District Court of Wright County, Iowa.